IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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Criminal Revision No. 1685 of 2006.
Date of Decision: March 20, 2008.

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Karam Singh Versus **State of Haryana and others.**

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Before: Hon'ble Mr. Justice R.S.Madan.

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Present: Shri Pankaj Midha, Advocate, for the petitioner.

Shri P.M.Anand, Additional Advocate General, Haryana.

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R.S.Madan, J

The sole question which has been raised by the petitioner in this petition is whether under the provisions of Section 195 of the Code of Criminal Procedure (hereinafter for brevity to be referred to as the “Code”), only the Senior Superintendent of Police, Jind was competent to file the complaint for an offence punishable under Section 182 of the Indian Penal Code or that the Station Housed Office of the Police Station Sadar, Jind was also competent to do so.

By filing this petition, the petitioner has challenged the correctness, propriety and legality of the judgment dated May 25, 2006 passed by the learned Additional Sessions Judge, Jind, whereby the appeal filed by the present petitioner against his conviction and sentence for the offence under Section 182 of the Indian Penal Code was dismissed and the petitioner was released on probation for a period of one year.

The brief resume of facts relevant for the disposal of this petition is that Karambir Singh resident of Village Daryawala was married in Village Khedar. He along with his family had gone to attend the marriage in his in-laws house. He died there due to heart attached. Hi in-0laws called

doctor Anant Ram and the doctor on reaching found Karambir dead. His in-laws informed about the death of Karambir to the in-laws of Shakuntla wife of Karambir. Accused Karam Singh reached Village Khedar and after verifying the facts and the cause of death of his brother Karambir, cremated the dead body in his native village in the presence of the villagers. The petitioner thereafter made three complaints to the Superintendent of Police, Jind alleging therein that his brother Karambir died due to strangulation or poisoning. The inquiry was conducted by the different police officers and on inquiry it was found that the cause of death of Karambir was heart attached and none else. Having found all the complainants to be false, calandra under Section 182 of the Code of Criminal Procedure, was filed against the petitioner by the Station House Officer of Police Station Sadar, Jind, which resulted into conviction and sentence for a period of two months and a fine of Rs. 500/-.

I have heard the learned counsel for the parties and have minutely swayed the submissions of the learned counsel.

In the case in hand the complaint , which was filed by the petitioner was made to the Senior Superintendent of Police, Jind and the inquiry was conducted by the Station House Officer of Police Station Sadar, Jind. It is admitted fact that no first information report was registered in the police station on the basis of that complaint. Thus it can be well said that it was under the orders of the Senior Superintendent of Police, Jind that the said complaint was inquired into by the SHO, who on inquiry found the allegations levelled in the complaint as false and immediately thereafter submitted the calandra against the petitioner under Section 182 of the Code of Criminal Procedure.

The learned counsel for the petitioner contended that the orders passed by the learned Additional Sessions Judge, Jind and by the Judicial Magistrate Ist Class, Jind whereby the petitioner was convicted

and sentenced, under Section 182 Cr.P.C., are null and void and are liable to be set aside, in view of the well settled law by this Court. In support of his contention, the learned counsel placed reliance on Harbans Singh Versus State of Punjab 1991(3) R.C.R. (Criminal) 113, wherein it has been observed as under:-

> ***" According to the provisions of Sections 195(1) of the Code of Criminal procedure, the court could have taken cognizance only on the complaint in writing of the Senior Superintendent of Police, Jind or some other superior Officer to whom he is administratively subordinate. By no stretch of imagination, it can be said that Station House Officer of the Police Station, Kotwali, Patiala, who had filed the Kalendra, Annexure P-1, against Harbans Singh petitioner for an offence under Section 182 IPC, is competent to do the same. If that if so then the impugned order of the trial Court taking cognizance of offence under Section 182 IPC against the accused-petitioner being violative of mandatory provisions of Section 195(1) of the Code is not sustainable"***.

On the other hand, the learned Additional Advocate General, Haryana submitted that the revision petition has become infructuous because vide order dated May 25, 2006 passed by the learned Additional Sessions Judge, Jind, the petitioner was released on probation under Section 4 of the Probation of Offenders Act, on his furnishing personal bond in the sum of Rs. 10,000/- with one surety of the like amount, for a period of one year. He contended that the period of one year probation has since expired and hence, there is no merit in this revision and the same be dismissed as having become infructuous.

After hearing the learned counsel for the parties and keeping in view the sole question, which has already been diluted and dealt with by this Court in Harbans Singh's case (supra), I am of the considered view that the orders passed by the learned Additional Sessions Judge, Jind and by the Judicial Magistrate Ist Class, Jind, are liable to be set aside being against the statute.

As a result, the revision petition is accepted. The orders dated May 25, 2006 (Annexure P-1) and December 09, 2004 (Annexure P-3) passed by the courts below are hereby set aside and the petitioner is acquitted of the charge framed against him.

March 20, 2008 **(R.S.Madan)**
Malik **Judge**